
(1995) 10 MAD CK 0071

In the Madras High Court

Case No : Tax Case (Appeal) No. 75 of 1986 and T.C.M.P. No. 370 of 1986

Madras Electrical Conductors (P) Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 31-10-1995

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 22, 23, 3, 34, 37

Citation : (1995) 10 MAD CK 0071

Hon'ble Judges : Raju, J;Kanakaraj, J;K.A. Swami, J

Bench : Full Bench

Judgement

D. Raju, J.—This tax appeal filed u/s 37 of the Tamil Nadu General Sales Tax Act, 1959, hereinafter referred to as "the Act" by the assessee, has been placed before this Full Bench by the orders of the honourable the Chief Justice on a reference made by a Division Bench of this Court (Abdul Hadi and Y. Venkatachalam, JJ.) of the following question for our consideration :

"Regarding the penalty leviable u/s 23 of the Tamil Nadu General Sales Tax Act, 1959, whether the decision in Elgi Equipments (Private) Limited Vs. The State of Tamil Nadu, is correct or the decision in State of Tamil Nadu v. Tube Investments of India Ltd. [1992] 85 STC 245 (Mad.) ?"

2. The necessary factual background which gave rise to the above proceedings and are relevant for a proper appreciation of the question placed before us for our consideration are to be stated at the threshold. The appellant/assessee are manufacturers and dealers in electrical conductors. For the assessment year 1980-81 the assessee reported a total and taxable turnover of Rs. 2,31,49,526 and Rs. 1,70,28,796 respectively under the Act. On verification of the relevant accounts and documents, the Deputy Commercial Tax Officer-II, Back Year Assessment, Zone VII, Madras, noticed the following two features, among other things :

(i) The assessee purchased from the M.M.T.C., Madras, aluminium ingots for Rs.

3,47,294 by furnishing declarations in form XVII as a consequence of which in respect of the said sale, the M.M.T.C. has collected only the concessional single point tax at 3 per cent on the sale value of those goods. Aluminium ingots are only raw materials to the aluminium conductors manufactured and sold by the assessee and cannot be claimed to be component parts to the goods manufactured and, therefore, neither the assessee was eligible to the benefit of concessional rate of tax u/s 3(3) of the Act nor are they entitled to use the form XVII for the purpose and the action of the assessee entails violation of section 3(3) read with section 45(2)(e) and consequent liability to pay penalty u/s 23 of the Act.

(ii) The assessee has collected surcharge on their sale of steel wire which is liable to sales tax only at 1 per cent single point and the collection of surcharge by the assessee was unauthorised and attracted the levy of penalty u/s 22 of the Act.

A show cause pre-assessment notice was given to which the assessee submitted explanation objecting to the proposal to levy the above penalties, among other things. So far as the proposed levy of penalty u/s 23 of the Act was concerned, the objections were based upon the decision reported in Elgi Equipments (Private) Limited Vs. The State of Tamil Nadu, that only if the goods purchased by them were sold as spare parts and not when they were consumed in the manufacture of goods, there was scope for levying penalty u/s 23 of the Act. The levy of penalty u/s 22 was objected on the basis of an unreported decision of this Court. It is unnecessary to deal with in great detail the issue relating to levy of penalty u/s 22 of the Act, since the learned counsel for the assessee represented before the Division Bench which initially heard the appeal that he is not pressing the appeal in so far as the abovesaid penalty of Rs. 614 u/s 22(2) of the Act (vide para 5 of the order of reference).

3. The assessing authority, after considering the objections of the assessee, overruled the same and by his proceedings dated March 24, 1983, confirmed the proposals made in respect of the levy of penalty both under sections 22(2) and 23 of the Act. So far as the penalty u/s 23 of the Act is concerned, it was held that the decision reported in Elgi Equipments (Private) Limited Vs. The State of Tamil Nadu, was not applicable to the case on hand since the aluminium ingots purchased from M.M.T.C. by the assessee was used only as a raw material for the aluminium conductors manufactured by them and the same cannot be claimed to have been used as a component part for the goods manufactured and sold by them. Thereupon, the assessee filed an appeal before the Appellate Assistant Commissioner, Kanchipuram. The appellate authority by his proceedings dated August 1, 1983, allowed the appeal and set aside the penalties levied u/s 22(2) and section 23 of the Act. So far as the penalty u/s 23 is concerned, it was held that this Court held in 1977 40 STC 310 [Elgi Equipments (Private) Limited v. State of Tamil Nadu] that the levy of penalty u/s 23 could be made only when the goods purchased by issuing form XVII were sold as spare parts and not when they are consumed in the manufacturing the goods not specified in the First

Schedule. Aggrieved, the Joint Commissioner-II, Madras, invoked his suo motu powers of revision u/s 34 of the Act, and issued a show cause notice dated March 13, 1985, calling upon the assessee to show cause as to why the order of the appellate authority be not set aside and that of the assessing authority restored. The assessee submitted their objections dated April 10, 1985 and thereafter the Joint Commissioner, by his proceedings dated October 28, 1985, overruled the objections and while setting aside the order of the appellate authority, restored the order of the assessing authority. Hence, the assessee filed the above appeal before this Court.

4. Before the learned judges of the Division Bench as also before us, the sheet anchor of the claim of the assessee was, the decision reported in Elgi Equipments (Private) Limited Vs. The State of Tamil Nadu, as against the reliance placed by the Revenue on the decision reported in State of Tamil Nadu Vs. Tube Investments of India Ltd., . It is in the teeth of such conflicting claims that the learned judges of the Division Bench who initially heard this appeal considered that there was conflict between 1977 40 STC 310 Mad [Elgi Equipments (Private) Limited v. State of Tamil Nadu] and State of Tamil Nadu Vs. Tube Investments of India Ltd., and it is necessary that the said conflict is resolved by a Full Bench. Hence, the reference.

5. (a) A reference to the two decisions, the facts and circumstances of the cases and the ratio laid down therein are appropriate and relevant to analyse the correctness or otherwise of either of those decisions and also to reconcile or resolve the conflict, if any, involved therein. The decision reported in Elgi Equipments (Private) Limited Vs. The State of Tamil Nadu, is that of a Division Bench of this Court (V. Ramaswami and Sethuraman, JJ.) wherein the scope of sections 23 and 45(2)(e) came up for consideration of the learned Judges in that case. The assessees therein were manufacturers and dealers in service station equipments such as air-compressors, car washers, hydraulic lifts, etc. During the assessment year 1964-65 the assessees had used motors and pistons in the manufacture of air-compressors and car washers and those motors and pistons were purchased by them by issuing form XVII to the sellers and paying the concessional rate of sales tax. The assessing authority, while rejecting the claims of the assessee to the contra, held that the goods manufactured and sold by the assessees would fall under item 41 of the First Schedule and liable to tax at 6 per cent. The appeal by the assessee before the first appellate authority also failed. But on further appeal before the Tribunal, it was held that the air-compressors and car washers could not be brought under entry 41 of the First Schedule. When the assessment for the years 1965-66, 1966-67 and 1967-68 came up for consideration the assessee did not project their claim as in the case of the assessment for the year 1964-65 and this resulted in the assessing authority subjecting the turnover in question covered by purchases by issuing form XVII to single point levy at 6 per cent under entry 41 of the First Schedule. The same was the position in respect of the year 1968-69. While matters stood thus, the assessing authority issued a notice u/s 23 of the Act, in respect of the years

1964-65 and 1968-69 proposing to levy penalty on the ground that the assessee had used the motors and pistons which were purchased by them on issuing form XVII declaration in the manufacture of goods which did not fall under any of the items mentioned in the First Schedule.

(b) The Division Bench, while rejecting the plea of the Revenue and sustaining the claim of the assessee held as hereunder :

"It is the argument of the learned counsel for the petitioners that form XVII, set out above, contains two declarations or undertakings, one to the effect that the dealer who issued the declaration and Purchased goods would use the goods purchased as component part of another goods specified in the First Schedule, which he manufactures inside the State for sale, and the other undertaking is that he shall not sell the goods purchased under the cover of that form as spare parts. According to the learned counsel, prosecution might be possible u/s 45(2) in respect of contravention of any one of these two conditions or both, but the levy of penalty u/s 23 could be made only when the goods were sold by him as spare parts and not when they were consumed in the manufacture of goods not specified in the First Schedule.

We are of the opinion that the learned counsel is well-founded in this contention. It may be seen from the contents of the form of declaration that the undertaking given by the purchaser consists clearly of two parts. In the first part, he undertakes to use the goods purchased as component parts of other goods specified in the First Schedule, which he is manufacturing inside the State for sale, and the second part deals with an undertaking not to sell the goods purchased under the cover of the form as spare parts. The contravention of this declaration would arise in the following cases : First, though the purchaser uses the goods purchased a component part of any other goods manufactured by him, for sale in the State, the goods manufactured are not specified in the First Schedule. Secondly, contrary to the declaration, he does not use it as a component part of any other goods manufactured by him, but sells the goods as such.

Section 23, in our opinion, deals with only the second class of contravention, where the goods were not used as component parts of any other goods manufactured by the purchaser, but are sold as such goods. This is clear from the fact that the penalty is related to the turnover relating to the sale of such goods and not to either the cost of purchase of the goods or its use as a component part in any other goods not mentioned in the First Schedule, manufactured by the assessee. There can be no turnover relating to the sale of such goods if the goods had formed a part of another manufactured item. The use of the words "turnover" and "sale of such goods" in section 23 read with the words "if any person purchasing goods is guilty of an offence under clause (e) of sub-section (2) of section 45" clearly shows that the section contemplates only a contravention of the declaration in form XVII by selling the goods purchased under the cover of the form as spare parts and not a case where it was used as a

component part of some other goods, which is not specified in the First Schedule.

The learned Government Pleader raises two contentions against this construction. Firstly, he referred to the words "sale of such goods" as not necessarily sale of the goods purchased in the form in which it was purchased, but even in a case where it forms part of a component of another article, it amounted to a sale of such goods. This argument is not acceptable, because when it forms a component part of another article, the turnover could relate only to the item of which these goods form part and not these goods themselves. Therefore, the use of the expression "turnover" clearly shows that it should be with reference to the identical goods which were purchased and sold and not as component part of some other articles.

Alternatively, the learned Government Pleader argued that the words "turnover relating to the sale of such goods" in section 23 have a reference to the turnover of the sale made by the third party. In other words, it related to the purchase turnover of the assessee. We are unable to accept this contention also. If really, the words "turnover relating to the sale of such goods" related to the turnover of the seller of the goods, then it could not be applied to a case where the purchaser, after having given the declaration, sells the same goods as spare parts, because, in such a case, penalty would be levied with reference to the sales turnover of the person, who gave the declaration and contravened the same and not with reference to the turnover of his seller. We are of the view that the turnover referred to in the section, with reference to which the penalty is levied, is the turnover of the offender and not the turnover of his seller. We are, therefore, of the view that u/s 23, a penalty could be levied only for a contravention of not using the article as component part of any other item manufactured by the purchaser, but selling as a spare part to a third party."

6. (a) The decision reported in *State of Tamil Nadu Vs. Tube Investments of India Ltd.*, is that of the another Division Bench of this Court (Dr. A. S. Anand, C.J. and Kanakaraj, J.) to which one of us was a party and author too. The assessees therein are manufacturers and dealers in cycle and cycle parts. They were said to have purchased dynamo lamps from one T.I. Millers, Madras, by issuing form XVII u/s 3(3) of the Act. Consequently, the assessee's sellers charged them concessional rate of tax at 3 per cent on their sales and the assessees paid tax only at that rate. The assessees, in the course of their business sold the dynamo lamps with the cycles. The assessing authority held that the assessee had not used the dynamo lamps as component parts of the cycles but only as accessories to the cycles and, therefore, the assessees ought not to have used or issued form XVII and availed of concessional rate of tax on their purchases and consequently held them liable u/s 23 of the Act. On appeal to the Deputy Commissioner, the liability was upheld but the quantum of penalty alone was reduced. Before the Tribunal, the assessees were able to succeed and the Tribunal held (a) that there was no mala fides in using form XVII and the assessees acted only bona fide; and (b) that the assessees had used and sold

the goods purchased by them along with the cycles and only in the dynamo lamps had been sold as such, the question of penalty u/s 23 of the Act will arise. The Revenue pursued the matter before this Court by means of a revision.

(b) The assesseees as well as the Tribunal in that case placed reliance upon the earlier decision reported in *Elgi Equipments (Private) Limited Vs. The State of Tamil Nadu*, and the Division Bench, while dealing with the issue in the decision reported in *State of Tamil Nadu Vs. Tube Investments of India Ltd.*, held as follows :

"7. However, the Tribunal has relied on *Elgi Equipments (Private) Limited Vs. The State of Tamil Nadu*, and holds that only if the dynamo lamps had been sold as such that the penalty u/s 23 of the Act, will be attracted. Inasmuch as the assesseees had sold the dynamo lamps along with the cycles the Tribunal was of the opinion that the penalty had to be deleted. In the said decision of the High Court, the assesseees had used motors and pistons in the manufacture of air-compressors and car washers. They purchased motors and pistons by issuing form XVII declaration to their sellers and paid a concessional rate of sales tax. The sale of air-compressors and car washers in which the assesseees had used motors and pistons, purchased by issuing form XVII declarations, were taxed by the assessing officer. It was held that the said articles would fall under item 41 of the First Schedule. But the Tribunal, on appeal, held that the sale of the said articles could not be brought under entry 41 of the First Schedule and liable to be taxed at multi-point rates. The assessing authority issued a notice u/s 23 of the Act in respect of two assessment years during which the assesseees had used the motors and pistons which had been purchased by them on issuing form XVII declaration in the manufacture of air-compressors, and car washers, which did not fall under any of the items mentioned in the First Schedule. In short, the levy of penalty u/s 23 of the Act was called for because the goods purchased under form XVII declarations had not been used for the manufacture of other goods mentioned in the First Schedule as contemplated by section 3(3) of the Act. The Division Bench held that contents of form XVII declaration comprise of two parts. In the first part he undertakes to use the goods as component parts of other goods specified in the First Schedule. In the second part he undertakes not to sell the goods purchased under cover of the form XVII as spare parts. The Division Bench held that section 23 contemplates only a contravention of the declaration in form XVII by selling the goods purchased as spare parts and not a case where it was used as a component part of some other goods which is not specified in the First Schedule. The arguments therefore in this case is that inasmuch a dynamo lamps had been sold along with the cycles, the question of penalty u/s 23 of the Act will not arise. We do not agree with this contention. This is because, in that case the question was whether the assessee manufactured goods falling under the First Schedule or not. In the present case that question does not arise. We are only concerned with the question whether the assesseees having purchased the goods under form XVII declarations, did not utilised the goods as component parts of cycles. We have already held that he

did not use the articles purchased as component parts of cycle. In other words, the assessee had failed without reasonable cause to make use of the goods for the "declared purpose" as mentioned in section 45(2)(e) of the Act. We are therefore of the opinion that the Tribunal had fallen into an error in holding that the assessee had sold the dynamo lamps along with the cycles and therefore the question of penalty u/s 23 of the Act will not arise."

7. For an effective consideration of the issues raised before us, it is necessary to set out the relevant provisions of the Act, particularly sections 3(3), 23 and 45(2) (e) of the Act since the very purport, scope and effect of those provisions only looms large for our consideration.

Section 3(3) of the Act, at the relevant point of time read as follows :

"3(3). Notwithstanding anything contained in sub-section (1) or sub-section (2), the tax payable by a dealer in respect of any sale of goods mentioned in the First Schedule by such dealer to another for use by the latter as a component part of any other goods mentioned in that Schedule, which he intends to manufacture inside the State for sale shall be at the rate of only three per cent on the turnover relating to such sale :

Provided that the provisions of this sub-section shall not apply to any sale unless the dealer selling the goods furnishes to the assessing authority in the prescribed manner a declaration duly filled in and signed by the dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority.

Explanation. - For the purposes of this sub-section, "component part" means an article which forms an identifiable constituent of the finished product, which along with others goes to make up the finished product and which is identifiable visually or by a mechanical process and not by a chemical process."

(The concessional rate of three per cent was increased to four per cent by the Tamil Nadu Act 29 of 1980 with effect from September 5, 1980).

Section 23 of the Act was as hereunder :

"23. Levy of penalty in certain cases. - If any person purchasing goods is guilty of an offence under clause (e) of sub-section (2) of section 45, the assessing authority may, after giving him a reasonable opportunity of being heard, by order in writing impose upon him by way of penalty a sum not exceeding one and a half times the tax payable on the turnover relating to the sale of such goods at a rate which is equal to the rate prescribed in the First Schedule less three per cent :

Provided that no prosecution for an offence u/s 45 shall be instituted in respect of the same facts on which a penalty has been imposed under this section."

Section 45(2)(e) reads thus :

"45. Offences and penalties. - (1).....

(2) Any person who -

(e) after purchasing any goods in respect of which he has made a declaration under the proviso to sub-section (3) or under the first proviso to sub-section (4) of section 3 fails without reasonable excuse to make use of the goods for the declared purpose; or

..... shall, on conviction by a Presidency Magistrate or a Magistrate of the First Class, be liable to a fine which may extend to one thousand rupees and in the event of second or subsequent conviction, to simple imprisonment which may extend to six months or a fine which may extend to two thousand rupees or both."

8. Mr. V. Ramachandran, learned senior counsel for the assessee/appellant, contended that the decision of the Division Bench reported in *Elgi Equipments (Private) Limited Vs. The State of Tamil Nadu*, lays down the correct position of law having regard to the language of section 23 and the stipulation contained about the manner in which the penalty has to be computed and levied and whatever may be the justification or otherwise for prosecution u/s 45(2)(e) for the alleged violation attributed to the assessee in issuing form XVII or the failure to make use of the goods for the purpose declared in form XVII, there is no scope or warrant for imposing the penalty u/s 23 which according to the learned senior counsel would be attracted only if the goods purchased by issuing form XVII are sold as such. Per contra, Mrs. Chitra Venkataraman, the learned Additional Government Pleader (Taxes) contends the ratio laid down in the later decision of the Division Bench reported in *State of Tamil Nadu Vs. Tube Investments of India Ltd.*, accords with the language, purpose and object of sections 3(3), 23 and 45(2)(e) of the Act and that the construction sought to be placed on behalf of the assessee, if accepted, would defeat the very object of the Legislature in enacting section 23 of the Act. Argued the learned counsel for the Revenue further that the second proviso to section 3(3) introduced by the Tamil Nadu Act 44 of 1986 with effect from 1986, would also go to lend support to such construction as countenanced in *State of Tamil Nadu Vs. Tube Investments of India Ltd.*, and that, therefore, the decision in *Elgi Equipments (Private) Limited Vs. The State of Tamil Nadu*, must be declared to be not good law. The learned counsel appearing on either side tried to read the above provisions and also refer to the decisions referred to supra to strengthen their respective stand before us.

9. We have carefully considered the submissions of the learned counsel appearing on either side. The fundamental fallacy underlying the decision reported in *Elgi Equipments (Private) Limited Vs. The State of Tamil Nadu*, is the assumption that the contravention which renders the assessee concerned liable for penalty u/s 23 of the Act is the contravention of the terms of the declaration in form XVII and that section 23 of the Act deals with the category of violation in

which the goods purchased by issuing form XVII were not used as component parts of any other goods manufactured by the purchaser/assessee but are sold as such goods only. The decision seems to draw support for such construction mainly from the language used and the basis adopted to measure the quantum of penalty to be levied u/s 23, in a given case. In other respects, this decision conspicuously omitted to take into consideration the interrelation and interdependence of these three provisions, viz., sections 3(3), 23 and 45(2)(e) of the Act and the scheme and purpose underlying the inevitable combination of those provisions and the avowed object and aim of section 23 itself. That apart, we are unable to persuade ourselves to approve the view taken in [1977] 40 STC 310 (Mad.) [Elgi Equipments (Private) Limited v. State of Tamil Nadu] that the turnover referred to in section 23 of the Act with reference to which the penalty is levied is the turnover of the offender and not the turnover of his seller and that therefore a penalty could be levied u/s 23 only for a contravention of not using the article as component part of any other item manufactured by the purchaser but selling as a spare part to a third party. Section 23 is not a provision levying sales tax on the sales turnover of the assessee who has violated section 3(3) read with the declaration in form XVII but really meant to penalise a person who had played truant with a statutory mandate and obligation resulting in an offence punishable u/s 45(2)(e) and rendering him also liable u/s 23 of the Act. The construction adopted in the decision in Elgi Equipments (Private) Limited Vs. The State of Tamil Nadu, not only whittles down the efficacy of section 23 of the Act but also mutilates and renders otiose the specific stipulations contained in section 45(2)(e) and also section 23 of the Act. Per contra, the decision reported in State of Tamil Nadu Vs. Tube Investments of India Ltd., accords more with the language, aim and object and subserves the purpose of section 23 of the Act as an effective anti-avoidance measure too without doing violence or damage to the stipulations and mandate contained in these satellite of statutory provisions. If the construction of the scope of section 23 as countenanced in Elgi Equipments (Private) Limited Vs. The State of Tamil Nadu, is to be accepted, it would amount to an evader of lakhs or even crores of rupees of tax being allowed to escape with a pittance of fine or and imprisonment with no scope for recouping the exchequer with the loss suffered on account of evasion and in our view a construction fraught with such incongruities and tending to defeat the object of the statute cannot have the approval of courts of law and justice. Consequently, there is absolutely no difficulty for us and we have also no hesitation in according our approval to the ratio of the decision reported in State of Tamil Nadu Vs. Tube Investments of India Ltd., and place on record of our disapproval of the decision in Elgi Equipments (Private) Limited Vs. The State of Tamil Nadu, and overrule the same.

10. Section 3(3) of the Act has been enacted to provide for a concessional rate of levy in respect of sale of goods with the ultimate object of benefiting only a purchaser/defaulters of goods mentioned in the First Schedule for use as a component part of any other goods which he intends to manufacture inside the

State for sale on the turnover relating to such sale. But for this benefit or concession shown in favour of the purchaser/defaulters his liability to pay tax to his vendor on such sales effected to him by his seller would have been more, the rates of tax being otherwise higher. The seller of the purchaser/defaulters is therefore, necessarily extended this concessional rate on condition that he obtains and produces before the assessing authority of the seller the form XVII signed and furnished by the dealer to whom the goods have been sold at the concessional rate as contemplated u/s 3(3) of the Act. Apart from the conditions specified in section 3(3) itself to avail of the concessional rate contemplated therein, the form XVII prescribed for the purpose to which the purchaser subscribes his signature also contains the specific undertakings given by the purchaser/defaulters to abide by the conditions in section 3(3). When the purchaser/defaulters contravenes the conditions subject to which he availed of the benefit of paying a concessional rate of tax to his vendor on sales effected to him, the purchaser/defaulters not only renders himself liable to be prosecuted u/s 45(2)(e) for such contraventions, but also incurs the liability to be penalised u/s 23, the penalty being the recovery of a sum not exceeding one and a half times the tax otherwise (that is the tax but for availing the concessional rate of tax) would have been payable by the purchaser to his vendor on the sales effected to him of the goods purchased by issuing the form XVII. Section 23, therefore, takes care to stipulate that if penalty has been imposed in respect of a case u/s 23, on the same facts no prosecution for an offence u/s 45 shall be instituted. Thus it could be seen that the scheme underlying sections 3(3), 23 and 45(2)(e) is to see that a person who abused and misused a privilege and concession, is made to repent and the State is enabled to recover from him not only the legitimate tax due to the State on a transaction which came to be lost to the State by the misconduct and abuse committed by the purchaser/defaulters, but also the penalty. That such is the aim, purpose and object of these provisions is also made clear by the judicial pronouncements that if the declaration given in form XVII turns out to be false in the sense that the goods purchased have not been used as declared in the prescribed form the purchaser alone is exposed to the penalties under sections 23 and 45(2)(e) and not the seller who has been held to be automatically entitled to the concessional rate of tax on the production to his assessing authority the declaration in form XVII furnished by the purchaser to the seller vide *Premier Electro-Mechanical Fabricators Vs. The State of Madras*, and [1993] 89 STC 438 (Mad.) (*State of Tamil Nadu v. Madras Petro Chem Ltd.*). The said view was taken by the Division Benches which decided those cases even de hors the amendment which inserted the 2nd proviso to section 3(3) in 1986, though the later decision in [1993] 89 STC 438 Mad (*State of Tamil Nadu v. Madras Petro Chem Ltd.*) also held to have drawn support for the view taken in *Premier Electro-Mechanical Fabricators Vs. The State of Madras*, by virtue of the said later amendment by the Tamil Nadu Act 44 of 1986. Therefore, to disintegrate the chain of link in these provisions and to construe the scope of section 23 in isolation by confining its ambit to an assumed notion or concept of turnover of the offender/purchaser being allowed to overtake and nullify the real

purport of the words "turnover relating to the sale of such goods" which words, in our view, really mean and refer to the turnover relating to the sale price for which the goods were sold to the purchaser/defaulters by his seller at concessional rate of tax by obtaining the form XVII. The assumption made in *Elgi Equipments (Private) Limited Vs. The State of Tamil Nadu*, to reject such a stand taken on behalf of the Revenue, viz., that in a case where after giving declaration the purchaser/defaulters sell the same goods as spare parts the penalty would be levied with reference to the sales turnover of the person who gave the declaration and contravened the same is also unwarranted since the question of dealing with a second or subsequent sale of the First Schedule goods in the same condition in which it was purchased does not arise at all and what is ensured u/s 23 is the recoupment of the loss estimated at a sum not exceeding one and a half times the tax payable on the turnover which escaped proper rate of assessment. Section 23 deals with a person purchasing goods and who is guilty of an offence under clause (e) of sub-section (2) of section 45 on account of failure to make use of the goods for the declared purpose and, therefore, the words "sale of such goods" inevitably is indicative of the sale to the offending purchaser since non-compliance with the conditions relating to the use for the declared purpose of such goods only attracted liability of the purchaser/defaulters to penalty u/s 23 of the Act. Having regard to the context and combined reading to be given to these inter-related provisions which have a definite and particular avowed object the words "tax payable on the turnover relating to the sale of such goods at a rate which is equal to the rate prescribed in the First Schedule less three per cent", mean and inevitably refers to the sale effected to the purchaser under a concessional rate of tax on obtaining form XVII from the purchaser/defaulters. This is placed beyond the pale of any genuine controversy by the stipulation "less three per cent", since the three per cent concessional rate of tax only has been already collected on the turnover relating to the sale of the goods effected, on obtaining form XVII, to the purchaser/defaulters who alone is rendered liable on account of his default only to pay the penalty u/s 23 of the Act. In view of the above, the apprehension and doubts expressed on behalf of the appellant that it is not clear as to whose sale is to be taxed and with reference to what point of time and at what rate of tax are nothing but mere speculative and purely hypothetical exercises wholly made more in despair and which in our view are also irrelevant in the context of our conclusions referred to above.

11. After concluding the arguments on the issue referred to the consideration of the Full Bench, we called upon the learned counsel appearing on either side to state as to whether the other issue arising in the appeal requires to be remitted for the consideration of the Division Bench or that the parties before us are prepared to urge the said contention also, to give a *quietus* once and for all, to the proceedings. The learned senior counsel for the appellant not only agreed for the consideration of the entire appeal by the Full Bench but also argued the other issue remaining in the appeal that the appellant could not be said to have

factually contravened section 3(3) or the declaration in form XVII for the reason that the appellant is entitled to purchase aluminium ingots by issue of form XVII for manufacturing aluminium conductors. In substance, the plea on behalf of the appellant is that since the aluminium ingots have been indisputably used in its entirety in the manufacture of the aluminium conductors, the provisions of section 3(3) and the declaration in form XVII stood fully satisfied and consequently there was no justification to have recourse to section 23 and impose the penalty under challenge. The learned counsel for the Revenue contended that it is not every user of the commodity purchased that conforms to section 3(3) and the terms of the declaration in form XVII and that to enable the benefit of the concessional rate of purchase u/s 3(3) by issuing form XVII declaration the goods purchased must be for use as component part of any other goods mentioned in the First Schedule which the purchaser intends to manufacture inside the State for sale. Apart from the fact that what goes into or is consumed as a raw material or ingredient in the manufacture of a finished product cannot properly be called to be a component of the finished product the Explanation of section 3(3) places the matter beyond the pale of controversy in declaring the position that for the purposes of section 3(3) "component part" means an article which forms an identifiable constituent of the finished product which along with the others goes to make up the finished product and which is identifiable visually or by a mechanical process and not by a chemical process. Even the appellate authority which granted relief to the appellant in the present case only proceeded on the basis that the aluminium ingots have been used as raw materials in the manufacture of aluminium conductors. By the very nature of things and the condition of the goods manufactured taken together with the manner of the use of the aluminium ingots it would be futile for the appellant to claim that the aluminium ingots purchased by the assessee by furnishing form XVII declaration really was used as a component part of the aluminium conductors either in the etymological sense of the word "component part" or as explained in the Explanation to section 3(3) of the Act, to justify the issue of form XVII for purchasing by the assessee the aluminium ingots at the concessional rate of tax. The claim of the appellant, even otherwise, on merits also does not deserve our acceptance.

12. For all the reasons stated above, we answer the question referred to the Full Bench by holding that the decision reported in *State of Tamil Nadu Vs. Tube Investments of India Ltd.*, has been correctly decided and we further hold that the decision reported in *Elgi Equipments (Private) Limited Vs. The State of Tamil Nadu*, does not lay down the correct position of law and shall stand overruled. Even on the other question relating to the merits of the plea that the appellant had not contravened section 3(3) of the Act or the declaration in form XVII or section 45(2)(e) rendering themselves liable to penalty u/s 23 of the Act, we reject the claim of the appellant as wholly untenable. The appeal, therefore, fails and shall stand dismissed, but in the circumstances of the case, there shall be no order as to costs.

13. In view of the dismissal of the appeal, no further or separate orders are necessary in the connected T.C.M.P.

14. Appeal dismissed.